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40 CFR Ch. I (7–1–08 Edition)

§ 271.14 Requirements for permitting.

All State programs under this subpart must have legal authority to implement each of the following provisions and must be administered in conformance with each; except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

- (a) Section 270.1(c)(1)—(Specific inclusions);
- (b) Section 270.4—(Effect of permit);
- (c) Section 270.5—(Noncompliance reporting);
- (d) Section 270.10—(Application for a permit);
- (e) Section 270.11—(Signatories);
- (f) Section 270.12—(Confidential information);
- (g) Section 270.13—(Contents of part A);
- (h) Sections 270.14 through 270.29—(Contents of part B);

NOTE: States need not use a two part permit application process. The State application process must, however, require information in sufficient detail to satisfy the requirements of §§ 270.13 through 270.29.

- (i) Section 270.30—(Applicable permit conditions);
- (j) Section 270.31—(Monitoring requirements);
- (k) Section 270.32—(Establishing permit conditions);
- (l) Section 270.33—(Schedule of compliance);
- (m) Section 270.40—(Permit transfer);
- (n) Section 270.41—(Permit modification);
- (o) Section 270.43—(Permit termination);
- (p) Section 270.50—(Duration);
- (q) Section 270.60—(Permit by rule);
- (r) Section 270.61—(Emergency permits);
- (s) Section 270.64—(Interim permits for UIC wells);
- (t) Section 124.3(a)—(Application for a permit);
- (u) Section 124.5 (a), (c), (d)—(Modification of permits);
- (v) Section 124.6 (a), (d), and (e)—(Draft permit);
- (w) Section 124.8—(Fact sheets);
- (x) Section 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e)—(Public notice);
- (y) Section 124.11—(Public comments and requests for hearings);

(z) Section 124.12(a)—(Public hearings); and

(aa) Section 124.17 (a) and (c)—(Response to comments).

NOTE: States need not implement provisions identical to the above listed provisions. Implemented provisions must, however, establish requirements at least as stringent as the corresponding listed provisions. While States may impose more stringent requirements, they may not make one requirement more lenient as a tradeoff for making another requirement more stringent; for example, by requiring that public hearings be held prior to issuing any permit while reducing the amount of advance notice of such a hearing.

[48 FR 14248, Apr. 1, 1983; 48 FR 30115, June 30, 1983]

§ 271.15 Requirements for compliance evaluation programs.

(a) State programs shall have procedures for receipt, evaluation, retention and investigation for possible enforcement of all notices and reports required of permittees and other regulated persons (and for investigation for possible enforcement of failure to submit these notices and reports).

(b) State programs shall have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements. The State shall maintain:

(1) A program which is capable of making comprehensive surveys of all facilities and activities subject to the State Director's authority to identify persons subject to regulation who have failed to comply with permit application or other program requirements. Any compilation, index, or inventory of such facilities and activities shall be made available to the Regional Administrator upon request;

(2) A program for periodic inspections of the facilities and activities subject to regulation. These inspections shall be conducted in a manner designed to:

- (i) Determine compliance or non-compliance with issued permit conditions and other program requirements;
- (ii) Verify the accuracy of information submitted by permittees and other regulated persons in reporting forms and other forms supplying monitoring data; and

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(iii) Verify the adequacy of sampling, monitoring, and other methods used by permittees and other regulated persons to develop that information;

(3) A program for investigating information obtained regarding violations of applicable program and permit requirements; and

(4) Procedures for receiving and ensuring proper consideration of information submitted by the public about violations. Public effort in reporting violations shall be encouraged, and the State Director shall make available information on reporting procedures.

(c) The State Director and State officers engaged in compliance evaluation shall have authority to enter any site or premises subject to regulation or in which records relevant to program operation are kept in order to copy any records, inspect, monitor or otherwise investigate compliance with the State program including compliance with permit conditions and other program requirements. States whose law requires a search warrant before entry conform with this requirement.

(d) Investigatory inspections shall be conducted, samples shall be taken and other information shall be gathered in a manner (e.g., using proper “chain of custody” procedures) that will produce evidence admissible in an enforcement proceeding or in court.

§ 271.16 Requirements for enforcement authority.

(a) Any State agency administering a program shall have available the following remedies for violations of State program requirements:

(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment.

NOTE: This paragraph requires that States have a mechanism (e.g., an administrative cease and desist order or the ability to seek a temporary restraining order) to stop any unauthorized activity endangering public health or the environment.

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit;

(3) To access or sue to recover in court civil penalties and to seek criminal remedies, including fines, as follows:

(i) Civil penalties shall be recoverable for any program violation in at least the amount of \$10,000 per day.

(ii) Criminal remedies shall be obtainable against any person who knowingly transports any hazardous waste to an unpermitted facility; who treats, stores, or disposes of hazardous waste without a permit; who knowingly transports, treats, stores, disposes, recycles, causes to be transported, or otherwise handles any used oil regulated by EPA under section 3014 of RCRA that is not listed or identified as a hazardous waste under the state's hazardous waste program in violation of standards or regulations for management of such used oil; or who makes any false statement, or representation in any application, label, manifest, record, report, permit or other document filed, maintained, or used for purposes of program compliance (including compliance with any standards or regulations for used oil regulated by EPA under section 3014 of RCRA that is not listed or identified as hazardous waste). Criminal fines shall be recoverable in at least the amount of \$10,000 per day for each violation, and imprisonment for at least six months shall be available.

(b)(1) The maximum civil penalty or criminal fines (as provided in paragraph (a)(3) of this section) shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the Act.

NOTE: For example, this requirement is not met if State law includes mental state as an element of proof for civil violations.

(c) A civil penalty assessed, sought, or agreed upon by the State Director under paragraph (a)(3) of this section shall be appropriate to the violation.

NOTE: To the extent the State judgments or settlements provide penalties in amounts